



STATE BOARD OF EQUALIZATION

June 22, 1951

Mr. C--- L. B---
O---, D---, N--- & H---
Attorneys at Law
XXX --- Street
--- ---, California

Account No. - - XXXXX
The T. J. C--- Company

Dear C---:

This is in reply to your letter of June 18 enclosing a copy of the sales tax return of the T. J. --- Company for the period April 1 to April 28, 1951, to which is attached a rider explaining the basis for claiming exemption with respect to a certain sale of asset to J--- G. and G--- L. L--- in the amount of \$99, 834.98. This sale is not entered on the return, either under total sales or under exemptions.

By way of explanation the rider claims exemption on two grounds. The first ground is that the sale is an occasional sale as defined in Section 6006.5 of the Revenue and Taxation Code and, therefore, exempt under Section 6367, for the reason that "The property subject to said sale was used by taxpayer in connection with its bookbinding business and said business is not an activity for which taxpayer was required to hold a seller's permit". We are not clear as to the basis for the statement that bookbinding is not an activity requiring the holding of a seller's permit. Ruling 27, Bookbinders, provides that bookbinders are retailers of the materials used in rebinding used books. A person binding new books would be no less a retailer or seller. Therefore, since bookbinding is an activity for which a permit is required, property used in such a business would appear to be property "held or used by a seller in the course of an activity for which he is required to hold a seller's permit" within the meaning of Section 6006.5. If you disagree with our opinion in this regard, we shall be glad to have the benefit of your comments.

The second ground upon which the exemption is claimed is that the property which is the subject of the sale is primarily real property, consisting of the leasehold at XXX --- Street and machinery and equipment attached to the premises. It is stated that taxpayer assigned the lease to the purchasers who do not intend to sever the machinery and equipment from the premises. In the event the machinery and equipment were trade fixtures or that the taxpayer had the present right to remove the machinery and fixtures under the express terms of his lease and his transferee takes the

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property subject to the same present right of removal, it is our opinion that there is a sale of tangible personal property involved.

We grant that the matter is not beyond the realm of doubt, but we have consistently taken this position and are reluctant to depart therefrom in the absence of a court adjudication that for purposes of sales tax a transaction such as this one involves a sale of real property rather than a sale of personal property.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: Mr. Burnett Sheehan